89-1367

No. 89-1369

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

LARRY WOLLERSHEIM,

Petitioner,

—v.—

CHURCH OF SCIENTOLOGY OF CALIFORNIA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases: PAGE

Constitutional and Statutory Provisions:

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Respondent Church of Scientology of California, ("the Church") respectfully requests that this Court deny the petition of Larry Wollersheim for a writ of certiorari seeking review of the judgment of the Court of Appeal of the State of California, Second Appellate District.[1]

STATEMENT OF THE CASE

The Church relies on the Statement of The Case in its Petition for a Writ of Certiorari in *Church of Scientology of*

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1 The parties to this proceeding and the Rule 28.1 list are set forth in the Petition for a Writ of Certiorari in *Church of Scientology of California v. Wollersheim*, No. 89-1361, at ii, filed on February 23, 1990.

California v. *Wollersheim*, No. 89-1361, at 2-10, filed on February 23, 1990 (hereinafter "Church's Pet."), which is pending before this Court.

REASONS WHY THE PETITION OF WOLLERSHEIM SHOULD BE DENIED

Petitioner Larry Wollersheim was the prevailing party below. He now petitions this Court to render an advisory opinion that Scientology is not a religion, despite the facts that such an advisory opinion could have no possible effect on the outcome of this case in its present posture; that Wollersheim never requested the trial court to make such a finding or to give such an instruction to the jury; and that Wollersheim did not cross-appeal from the trial court's determination that Scientology is a religion entitled to the protections of the First Amendment. Wollersheim's petition fails to raise a question of law amenable to review, let alone justifying review, by this Court.

To the extent the petition can be construed to raise a question concerning the court of appeal's reduction of the damage award, the decision to reduce that award was based purely on state law, and the propriety of the state court's reduction does not raise a federal question.[2]

1. The most significant aspect of Wollersheim's petition is the extent to which it corroborates the central thesis of the Church's petition for a writ of certiorari. As the Church's petition explained, the trial in this case centered on Wollersheim's claim that the Church's provision to Wollersheim of Scientology's central peaceful religious practice of auditing, *per se*, constituted outrageous conduct and intentional infliction of emotional distress. Church's Pet. at 2-6, 11-20. Wollersheim's petition repeatedly makes clear that the jury was invited to and undoubtedly did return its massive verdict

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2 As set forth in the Church's petition, the decision to allow $2,000,000 in punitive damages against the Church does raise substantial questions under the First Amendment and the Fourteenth Amendment's due process clause. Church's Pet. at 26-29.

on behalf of Wollersheim based upon its evaluation of the alleged emotional and psychological impact of auditing, *per se*, upon the plaintiff.

Thus, for example, Wollersheim describes his emotional distress claim as resting in major part on "subjecting Wollersheim to forms of coercive persuasion," which he defines as "auditing." Wollersheim Petition at 6 (hereinafter "Pet."). He states that his "evidence and experts demonstrated auditing was *inherently* and *intrinsicly* [sic] a coercive persuasion type practice based on creating hypnotic or trance like states of increased suggestibility and decreased independent judgment." *Id.* at 4 (emphasis added). He confirms his reliance on five purported "cataclysmic breakdowns caused by Scientology's coercive persuasion practices applied to Wollersheim," *id.*, and he acknowledges that the so-called "upper level" auditing "materials were the very areas most closely associated with the five cataclysmic breakdowns," *id.* Wollersheim asserts that, "Scientology used thought reform and coercive persuasion as their central and standardized practice," *id.* at 3; *see id.* at 12, and that he "submit[ted] to the practices of Scientology such as 'disconnect' because of the power of coercive persuasion," *id.* at 7. He concludes that "there is adequate proof the coercive persuasion aspects of auditing caused real [emotional] harm to Wollersheim and that Scientology's conduct was outrageous." *Id.*[3]

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3 Wollersheim relied at trial upon the theories and testimony of psychologist Margaret Singer and sociologist Richard Ofshe for his claims of "coercive persuasion" and "thought reform". Singer and Ofshe have recently been precluded from testifying as experts on these subjects by a federal district court judge in California on the ground that their theories are not generally accepted within the scientific community. *United States* v. *Fishman*, No. CR-88-0616-DLJ (N.D.Cal. March 15, 1990). This decision once again highlights the conflict among the lower courts concerning claims of "thought reform" against minority religions. *See also Kropinski* v. *World Plan Executive Council—US*, 853 F.2d 948, 957 (D.C. Cir. 1988) (requiring trial court on remand to determine whether Dr. Singer's thought reform theories have general acceptance in the scientific community); *United States* v. *Kozminski*, 821 F.2d 1186, 1205 (6th Cir. 1987) (en banc)(Krupansky,

Nothing in Wollersheim's petition suggests that his intentional infliction of emotional distress claim was based even in part upon the theory, created by the court of appeal, that he was compelled by force or secular threats to participate in auditing, let alone that his claim was limited to such a theory. Moreover, Wollersheim's contention that his case is based on the proposition that "Scientology uses coercive persuasion as a central and standardized practice," Pet. at 12, is wholly at odds with the court of appeal's assertion that, "by imposing liability in the instant case we in no way or degree prevent or inhibit Scientology from continuing the free exercise of the religious practice of auditing." (A-27 to A-28) (internal quotations omitted).[4]

Thus, Wollersheim's petition provides dramatic support for the Church's claim in its petition that the trial in this case turned upon the jury's subjective evaluation that a peaceful and voluntary religious practice is outrageous, and that the court of appeal abdicated its constitutional obligation to reverse a judgment that *may* have (here, was virtually certain to have) rested upon grounds impermissible under the First Amendment, and its obligation to review independently the record to insure that the Church has not been held liable for engaging in constitutionally protected religious practices. *See* Church's Pet. at 20-26. While Wollersheim's petition must be denied, the Church's petition should be granted.[5]

J., concurring) (rejecting similar "involuntary conversion" and "psychological hostage" theory as "ridiculous" and an "invention"), *aff'd*, 487 U.S. 931 (1988); Church's Pet. at 16-20.

4 References to "A-_____" are to the Appendices to Wollersheim's Petition. References to "_____a" are to the Appendices to the Church's Petition, No. 89-1361. Citations to "RT_____" are to the Reporters Transcript of the pre-trial and trial proceedings. References to "App. A _____" are to pages in the Appellant's Appendix in Lieu of Clerk's Transcript filed in the court of appeal.

5 It is possible that this Court might be reluctant to grant certiorari in cases where one of the parties appears *pro se*, as Wollersheim apparently has done. However, the Church should not be required to suffer the infringement of its First Amendment rights merely because Wollersheim has suddenly decided to dismiss his counsel and proceed on

2. Wollersheim asks this Court to grant certiorari so that it may decide that Scientology is not a religion entitled to the protections of the First Amendment, but rather that it is "a mockery of religion." Pet. at 11. Wollersheim, however, *never* requested the trial court to find that Scientology is not a religion or that it is a "mockery" of religion, nor did he seek a jury instruction to that effect. He merely opposed the Church's motion for summary adjudication and its request for jury instructions that Scientology is a religion under the First Amendment. At the most, Wollersheim wished to preserve the issue for determination by the jury, although he did not propose a jury instruction by which the jury could make that determination.

Thus, there is no basis in the record for Wollersheim's attempt to invoke this Court's jurisdiction to decide a question not raised below. Certiorari should be denied on this basis alone.

3. Wollersheim makes no claim that the trial court, which held that Scientology is a religion, applied an incorrect legal standard to that question. Nor does Wollersheim argue that the proper legal standard or definition of a religion is a substantial constitutional question upon which the lower federal and state courts are in disagreement and which warrants this Court's review.[6] Indeed, Wollersheim does not even discuss

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his own. Wollersheim has been more than adequately represented for nearly ten years by the law firm of Greene, Broillet, Paul, Simon & Wheeler, with offices in Los Angeles, California and Washington, D.C., and which presumably retains a substantial contingency interest in the outcome of this case.

6 This Court has adequately established the proper standards for a definition of religion or religious views under the First Amendment. *See, e.g., Thomas v. Review Bd. of Indiana*, 450 U.S. 707, 713-16 (1981); *Welsh v. United States*, 398 U.S. 333, 338-40, 343-44 (1970); *United States v. Seeger*, 380 U.S. 163, 173-85 (1965); *Torcaso v. Watkins*, 367 U.S. 488, 495 & n.11 (1961). The lower courts, including the California courts, generally have followed these standards. *See, e.g., International Society of Krishna Consciousness, Inc. v. Barber*, 650 F.2d 430, 439-41 (2d Cir. 1981); *Malnak v. Yogi*, 592 F.2d 197,

or refer to the question of the proper constitutional definition of religion under the First Amendment or how or why it was purportedly improperly applied here.

Instead, Wollersheim seeks to present a factual argument, based in large part upon matters which he concedes are not in the record below, that Scientology should not be considered a religion. Assuming this Court could review this non-record "evidence",[7] this issue, which involves a routine

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199 (3d Cir. 1979); *id.* at 200-15 (Adams, J. concurring); *People v. Woody*, 61 Cal.2d 716, 40 Cal.Rptr. 69, 72-77 (1964); *Fellowship of Humanity v. County of Alameda*, 153 Cal.App.2d 673, 315 P.2d 394 (1957).

7 The numerous references in Wollersheim's petition to matters not in the record or which have nothing to do with this case not only must be disregarded, but are false and inaccurate. For example, Wollersheim claims, without citation, that evidence in the case showed a pattern of retribution against several judges. Pet. at 13. This claim is delusional; there is no record of or truth to the allegation. Wollersheim then devotes several pages, *id.* at 17-19, to distorting snippets of the writings of L. Ron Hubbard in support of an argument that Scientology churches bring frivolous lawsuits, ignoring that this lawsuit was initiated by *him*. He guesses, without identifying the basis for his guess, at what would have been contained in "9 feet of materials" which he acknowledges were not ordered by the trial court to be produced at trial, let alone introduced into evidence. *Id.* at 6.

Wollersheim's case references on the "nature" of Scientology are similarly irrelevant and inapposite. Contrary to Wollersheim's suggestion, Pet. at 15, *Church of Scientology of California* v. *C.I.R.*, 823 F.2d 1310 (9th Cir. 1987), *cert. denied*, 486 U.S. 1015 (1988), explicitly acknowledged the religious nature of Scientology and that the California church is indeed a church, *id.* at 1313; the court denied the Church's tax exempt status for a three year period based upon the Church's purported failure to prove that there was no inurement of income to L. Ron Hubbard in those years. *United States* v. *Heldt*, 668 F.2d 1238 (D.C. Cir. 1981), *cert. denied*, 456 U.S. 926 (1982), involved a criminal prosecution of individuals, not church entities. *Church of Scientology of California* v. *Armstrong*, No. C 420153 (Sup.Ct. L.A. Cty. 1984), is irrelevant to the issues in this case, and in any event may not be cited, as it is an unpublished trial court opinion presently on appeal.

Wollersheim also makes obscure references to irrelevant disputes in Australia and other countries. Pet. at 14, 25. He fails to note that the

determination whether the lower state court properly applied a set of facts to well established and unchallenged legal standards, is not a proper basis for seeking certiorari from this Court. The petition should be denied on that basis as well.

In any event, Wollersheim's attack on Scientology's status as a religion within the meaning of the First Amendment is premised on a view of religion long rejected by this Court. Wollersheim contends that Scientology rejects "much of what we accept in the very broadest of terms to be the conceptual content of religion (God, the devil, Jesus Christ, Heaven, etc.)." Pet. at 6. This extremely narrow definition of religion (only Christianity recognizes all four of these concepts) hardly comports with this Court's expansive interpretation of religion under the First Amendment. *See, e.g., Torcaso v. Watkins*, 367 U.S. 488, 495 & n.11 (1961) ("neither [a state or federal govenment] can aid those religions based on a belief in the existence of God as against those religions founded on different beliefs").

Morever, numerous courts in recent years have addressed the question whether Scientology is a religion entitled to First Amendment protection, and they almost universally have held that it is.[8] The fact that in many of these cases the

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Australian inquiry ended in an opinion from the High Court of Australia absolving the Scientology church there of misconduct and recognizing Scientology as a bona fide religion. *Church of the New Faith* v. *Commissioner for Payroll Tax*, 49 Aust. L. R. 65 (Aust. 1983).

8 *See, e.g., Hernandez v. C.I.R.*, ____ U.S. ____, 109 S.Ct. 2136, 2141 (1989); *Church of Scientology of California v. C.I.R., supra*, 823 F.2d at 1313; *Founding Church of Scientology v. United States*, 409 F.2d 1146, 1160 (D.C. Cir.), *cert. denied*, 396 U.S. 963 (1969); *Peterson v. Church of Scientology of California*, Civ. No. 81-3259 CBM, slip op. at 4 (C.D. Cal. Feb. 29, 1984) (App. A68-72); *United States v. Article or Device*, 333 F.Supp. 357, 360 (D.D.C. 1971); *Christofferson v. Church of Scientology of Portland*, 57 Or.App. 203, 644 P.2d 577, 601, *review denied*, 293 Or. 456, 650 P.2d 928 (1982), *cert. denied*, 459 U.S. 1206 (1983). The lone exception to this unbroken line of decisions, which proves the rule, is *Missouri Church of Scientology*

United States government not only has not challenged,[9] but has conceded and even stipulated to Scientology's religiosity, even in the course of hard fought litigation,[10] hardly shows that the question merits review by this Court, as Wollersheim urges. To the contrary, one must conclude that the government determined in these cases that it would be either improper or a losing proposition to controvert the issue.

4. To the extent that Wollersheim's petition is viewed as merely asking this Court to determine that the summary adjudication and jury instruction that Scientology is a religion were incorrect, and that the question should have been left as a purely factual issue for the jury to determine, certiorari would be inappropriate for several reasons.

First, determination of that question, as well as the question whether Scientology is a religion, would be advisory, unless the Court grants the Church's petition and reverses for

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v. *State Tax Commission*, 560 S.W.2d 837 (Mo. 1977), *app. dism'd*, 439 U.S. 802 (1978), which found Scientology not to be a religion on the unconstitutional rationale that Scientology purportedly posits no deity. 560 S.W.2d at 840-42. *See Torcaso* v. *Watkins*, 367 U.S. 488, 495 & n.11 (1961).

Wollersheim's reliance, Pet. at 16, on the irrelevant statement concerning Scientology's status as a religion in *Founding Church of Scientology* v. *Webster*, 802 F.2d 1448, 1451 (D.C. Cir. 1986), *cert. denied*, 484 U.S. 871 (1987), which, as the court itself acknowledged, was not at issue, is misplaced. In *Webster*, the court's decision specifically turned on L. Ron Hubbard's "preeminence as spiritual or ecclesiastical head of Scientology," and his status as its "founder and spiritual leader." 802 F.2d at 1456-57.

9 *See, e.g., Founding Church of Scientology, supra*, 409 F.2d at 1160. Wollersheim's suggestion that the courts in the *Founding Church* case "lamented", the government's decision not to contest Scientology's religiosity is nothing but a gross distortion of those courts' comments on the absence of any evidence that Scientology is not a religion. *See, e.g., Founding Church of Scientology*, 409 F.2d at 1160; *Article or Device*, 333 F.Supp. at 360.

10 *See, e.g., Hernandez, supra*, 109 S.Ct. 2136; *Church of Scientology* v. *C.I.R., supra*, 823 F.2d 1310.

a new trial. Without reversal on the Church's petition, Wollersheim's question is merely hypothetical, since resolution of it alone would have no effect on the case in its present posture. The Church would remain liable for its alleged conduct towards Wollersheim, and the $2.5 million compensatory and punitive damages award would remain in effect. Under Article III of the United States Constitution, of course, this Court does not issue advisory opinions. *See Flast v. Cohen*, 392 U.S. 83, 95 (1968).

Second, Wollersheim does not claim that the trial court's adjudication that Scientology is a religion violated any constitutional standard or that, as a matter of constitutional law, the religious status of Scientology must be resolved by a jury. Rather, Wollersheim contends that the state court erred, as a matter of *state procedural* law, in granting summary adjudication that Scientology is a religion, purportedly because there was insufficient evidence to resolve this issue, or because Wollersheim purportedly attempted to provide further evidence after the summary adjudication. This issue raises no federal question for this Court's review.

Prior to trial, the Church brought a timely motion for summary judgment, asserting, *inter alia*, that Scientology is a religion. Church's Pet. at 53a. The court refused the Church's request to rely on other cases that had found that Scientology is a religion or to take judicial notice of Scientology's religious status. *Id.* at 53a-54a. Instead, the court treated the issue as a mixed question of fact and law, and found that as to the requisite factual showing, "Scientology is a religion. I think the moving papers sufficiently establish that. . . . The supporting documents for the proposition that Scientology is a religion do more than make a prima facie case; they make a strong case . . . and I am referring particularly to the declaration of Mr. Flinn." *Id.* at 54a; *see id.* at 56a (Minute Order granting summary adjudication of issue number 5, that Scientology is a religion).

Summary adjudication was granted, however, not merely because of the "strong" evidence in support of the Church's

position. The court also relied on Wollersheim's failure to controvert the Church's showing in accordance with state procedural rules:

> I have no separate statement presented by the opposition as required by [Cal. Civ. Code] section 437c. And as to the extent that factual matters are invoked, as I believe they are, with respect to that issue, any controverting should be by a separate statement with the appropriate citations as required by the code. That's not done.

Id. at 54a.

On review of the trial court's summary adjudication, the court of appeal held:

> [W]e have no occasion to go beyond a review of the summary adjudication decision the trial court reached at the law-and-motion stage . . . . we find that on the evidence before the court the judge properly ruled Scientology qualifies as a religion within the meaning of the Freedom of Religion Clauses of the United States and California Constitutions.

A-14 to A-15. Similarily, the court of appeal affirmed the trial court's determination that auditing is a religious practice of Scientology (Church's Pet. at 47a-52a):

> the trial court granted summary adjudication that "auditing" is a "religious practice" of Scientology. Once again, our review of the trial court decision reveals that on the basis of the evidence before the court on that occasion, the ruling is correct. Thus for purposes of this appeal we find "auditing" qualifies as a "religious practice" just as Scientology qualifies as a "religion."

A-19 to A-20.

Wollersheim simply cannot complain to this Court of his failure to comply with state procedural rules, of his failure to present controverting evidence in a timely fashion, or of his disagreement as to the sufficiency of the evidence to support a state court summary adjudication of a mixed question of

law and fact. Nor does the mere fact that Wollersheim purportedly *could* have submitted evidence to controvert the Church's showing raise any issue for this Court's review. Any inability on his part to do so results not from any First Amendment "paradox," Pet. at 11, but from Wollersheim's own failure to meet the Church's showing at the summary adjudication stage.[11] Thus, Wollersheim's claim that there is no way to "decertify" Scientology as a religion, to the extent this claim is comprehensible, raises no issue in this case, where Wollersheim had an opportunity to controvert the Church's evidentiary showing at the summary adjudication stage, but failed to do so. Similarly, the trial court's instruction to the jury that Scientology is a religion, which merely followed the summary adjudication decision, raises no federal question for this Court's review.

Finally, the state court properly adjudicated Scientology's religious status prior to trial. The lower state and federal courts are in agreement that the issue of a party's status as a religion entitled to First Amendment protection is a question of law, or at most a mixed question of fact and law, as held by the law-and-motion judge. Church's Pet. at 54a. Thus, the issue is properly determined by the court prior to trial, and not by a jury. *See, e.g., Peterson v. Church of Scientology of California*, No. CV-81-3259 CBM, slip op. at 2 (Feb. 27, 1984) (App. A69) (finding Scientology to be a religion on motion for summary judgment); *Van Schaik v. Church of Scientology*, 535 F.Supp. 1125, 1144 (D. Mass. 1982) (ruling that whether Scientology is a religion will be determined on motion for summary judgment); *United States v. Silberman*, 464 F.Supp. 866, 871 (M.D. Fla. 1979) (whether conduct is religious activity is a "mixed question of law and fact," and

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11 Wollersheim complains that the trial court refused to admit certain evidence because its prejudicial impact outweighed its probative value. Wollersheim states that he "believed First Amendment difficulties were the real issue." Pet. at 5. Without any explanation or substantiation of the evidence to which Wollersheim refers, petitioner's belief hardly turns the state court's broad discretion to reject prejudicial evidence into a constitutional issue worthy of this Court's review.

"ultimately a conclusion of law" for the court to decide); *Malnak v. Yogi*, 440 F.Supp. 1284, 1326-27 & n.30 (D.N.J. 1977) (determining on summary judgment motion that Transcendental Meditation is a religion; court must decide "constitutional facts" such as whether entity constitutes a religion for First Amendment purposes), *aff'd*, 592 F.2d 197 (3d Cir. 1979).

Appellate courts have also routinely made the legal determination, on the facts before them, that an activity or entity is religious. *See, e.g., Wisconsin v. Yoder*, 406 U.S. 205, 216 (1972) ("the record in this case abundantly supports the claim that the traditional way of life of the Amish is not merely a matter of personal preference, but one of deep religious conviction"); *Founding Church of Scientology* v. *United States*, 409 F.2d 1146, 1160 (D.C. Cir.), *cert. denied*, 396 U.S. 963 (1969); *International Society of Krishna Consciousness, Inc. v. Barber*, 650 F.2d 430, 440-41 (2d Cir. 1981); *Christofferson v. Church of Scientology of Portland*, 57 Or.App. 203, 644 P.2d 577, 601, *pet. denied*, 293 Or. 456, 650 P.2d 928 (1982), *cert. denied*, 459 U.S. 1206 (1983). Thus, no question for this Court's review is raised by the state court's pre-trial determination that Scientology is a religion or the court of appeal's affirmance of that decision.

5. Finally, it is unclear whether Wollersheim seeks certiorari to review the reduction in the jury's $30,000,000 damage award, as the petition contains no question on this issue. If he does, such review would be clearly inappropriate, as the reduction was purely a question of state law, for state courts to decide.[12]

The court of appeal relied solely on state law in reducing the compensatory damage award. Citing only California court cases and commentary for the standard for reducing a compensatory damage award, the state court held that "it is manifest the jury's award here is excessive since it is grossly

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12 The Church continues to assert that the $2,000,000 punitive damage award against the Church violates the First Amendment and the Fourteenth Amendment's due process clause. Church's Pet. at 26-29.

disproportionate to the evidence concerning Wollersheim's damages." (A-38). The court then reviewed the extent of Wollersheim's injury and reduced the damage award from $5,000,000 to $500,000 (A-38). No federal questions can possibly be raised to challenge this reduction.

Similarly, the state court relied purely on state law in reducing the punitive damage award. The court reviewed the award under the three factors established by the California Supreme Court (A-38 to A-40) (citing *Neal v. Farmers Ins. Exchange*, 21 Cal.3d 910, 928, 148 Cal.Rptr. 389, 399, 582 P.2d 980 (1978)). Applying these three factors, the court found: 1) the $25,000,000 punitive award was "not commensurate with Scientology's conduct *in this case*" (A-39) (emphasis original); 2) "the ratio [between compensatory and punitive damages] is well outside the permissible range established in other appellate cases" (A-43); and 3) "[r]espondent asserts appellant's true net worth approaches $250 million not $16 million and thus the punitive damage award is not excessive. However, respondent failed to prove the higher net worth figure at trial" (A-44).

Wollersheim appears to contend that the pretrial determination that Scientology is a religion prevented him from submitting evidence that would have substantiated the jury's "preposterous" $25,000,000 punitive damage award (A-40). But he points to no evidence that was excluded because Scientology is a religion, or how such evidence would support the punitive damage award.[13] Wollersheim simply failed to present any relevant, admissible evidence to the trial court to support his claim of the Church's purported vast wealth, for

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13 Wollersheim's insistence that massive punitive damages of $25,000,000 should be awarded because the punitive damage award in *Allard v. Church of Scientology of California*, 58 Cal.App.3d 439, 129 Cal.Rptr. 797 (1976), *cert. denied*, 429 U.S. 1091 (1977), purportedly failed to deter the Church's alleged conduct towards Wollersheim raises no federal question for this Court's review. In any event, *Allard* involved a claim of malicious prosecution and had nothing to do with Wollersheim or the nature of his claim.

reasons wholly unrelated to any constitutional question.[14] Therefore, no reason exists for this Court to review the court of appeal's routine application of state law to reduce the extraordinary and grossly excessive damage award.

CONCLUSION

For the reasons stated herein, Wollersheim's petition for a writ of certiorari should be denied.

Dated: March 29, 1990

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14 The trial court ruled that, under state law, the defendant's net worth for purposes of awarding punitive damages is measured at the time of trial (RT 14,343). *See, e.g., Marriott v. Williams*, 152 Cal. 705, 710, 93 P. 875 (1908); *Zhadan v. Downtown Los Angeles Motor Dist.*, 100 Cal.App.3d 821, 839, 161 Cal.Rptr. 225, 236 (1979). In response to Wollersheim's argument that he should be allowed to submit evidence of the Church's net worth five years earlier, the court inquired into Wollersheim's evidence (RT 14,316-43). Wollersheim conceded that one witness was unavailable to testify (RT 14,341), and the court had already disqualified the other witness from testifying about the Church's financial condition for reasons wholly unrelated to any constitutional issue (RT 7854).